

MASSACHUSETTS

Public Employee Retirement Administration Commission

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M E M O R A N D U M

TO: All Retirement Boards

FROM: Joseph I. Martin, Deputy Executive Director

RE: G.L. c. 32, §§ 90A, C and D

DATE: September 3, 1999

The Commission has received questions concerning various aspects of the provisions of G.L. c. 32, §§ 90 A, C and D. These sections allow a city, town, district or the MassPort Authority which has accepted the section(s) to annually increase the retirement allowance of a former employee to a maximum of 50% of the current salary for the position from which they retired. It should be noted that districts may only accept § 90C and D. The employer may approve an increase of any percentage not to exceed 50%.

Section 90A applies to former employees retired for accidental disability. Section 90C applies to former employees with 25 years of employment (not creditable service) in said city, town, district or MassPort Authority who are retired for superannuation. Section 90D applies to former employees with 25 years of employment in said city, town, district or MassPort Authority who are retired for ordinary disability. A city, town, district or the MassPort Authority must first accept the provisions of the sections on a one-time basis by a 2/3 vote of a city council (with the mayor's approval), town meeting, prudential committee of a district or a majority vote of the MassPort Authority members, as appropriate. Once that has been done, annual approval of the three provisions in the same manner actually grants the increase(s). The retirement board has no vote in or veto of the granting of an increase under any of these sections. These sections must be approved each year if the city, town, district or MassPort Authority decides to annually increase the applicable retiree's allowances.

The city council, town meeting, prudential committee or MassPort Authority may determine to which of its eligible former employees it wishes to grant an increase. It may choose to grant the increases to specific former employees or classes of former employees. Cities, towns and districts should consider whether or not to grant such an increase to teachers who are employed by the city, town or district, given that the Commonwealth pays their original allowance (a separate check would be required).

When a § 90A, C or D increase is granted, the new allowance is a permanent addition to a retiree's base retirement allowance. In the future, any COLA increase pursuant to Chapter 17 of the Acts of 1997 which is granted to the member of the retirement system would be granted based on the increased

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allowance. The cost of any Chapter 17 COLA that is granted would be paid by the community which grants it.

A retiree may receive both a COLA increase and an increase under § 90A, C or D in the same year. Previously, it had been the position of the Commission that when a COLA increase and an increase pursuant to G.L. c. 32, § 90A, C or D are granted in the same year, a retiree would only receive the increase that is larger for that particular year. This was pursuant to G.L. c. 32, § 102, before it was amended, which provided that:

[W]henever the amount of any pension, retirement allowance or annuity is increased under any general or special law other than through a cost-of-living adjustment pursuant to this section, the fixed retirement allowance, pension or annuity shall be determined by adding the increase under any general or special law, or the cost-of-living adjustment, whichever is greater, but not both. (Emphasis supplied.)

When § 102 was rewritten in June of 1997, the prohibition against receiving both the COLA and a § 90A, C or D increase in the same year was removed. When § 103 was added in 1997, it contained no prohibition about receiving more than one increase in the same year. Therefore, based upon this change in the statute, it is now the position of this Commission that a person may receive both a § 90A, C or D increase and a COLA increase in the same year.

Given this change, the order that such increases are granted takes on added importance. If the COLA is granted by the retirement board before the § 90A, C or D increase, the retirement allowance is raised by the amount of the COLA and then is increased by the provisions of § 90A, C or D. If the § 90A, C or D increase is granted before the COLA, the COLA is granted based on the § 90A, C or D increased retirement allowance. As an example, a retiree with an allowance of \$8,000 who is granted a § 90A increase (which increases their allowance to \$10,000) and is subsequently granted a COLA (1.3% in FY 2000) would have a new allowance of \$10,130. If the COLA is instead approved before the § 90A increase, the COLA would increase the allowance to \$8,104 and then § 90A would increase their allowance to \$10,000.

Veterans who qualify for up to \$300 per year (fifteen dollars for each year of creditable service or fraction thereof to a maximum of \$300) in an additional allowance pursuant to G.L. c. 32, § 5(2)(b) are to receive the amount up to \$300 above their new § 90C (but not § 90A or D) increased allowances. As an example, if a veteran retiree's allowance is increased to \$5,000 as a result of § 90C, the \$300 veteran's allowance would be added on top of that increase to give the ultimate allowance of \$5,300.

We trust the foregoing is of assistance. If you have further questions or concerns, please contact this office.